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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,224	10/09/2001	Gunter Krautkramer	WEB 0035 1A	7431

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09/08/2003

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EXAMINER

ELOSHWAY, NIKI MARINA

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 09/08/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/973,224

Applicant(s)

KRAUTKRAMER, GUNTER

Examiner

Niki M. Eloshway

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-16 and 18-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Hertrampf (U.S. 6,021,912). Hertrampf teaches a screw closure 1 having a top plate portion 3, and a substantially cylindrical peripheral portion 12. The cylindrical bead of the peripheral portion is located directly above lead line 13. The sealing strip is element 9, and it is considered “deformable” to the degree set forth in the claim because it can be deformed if the appropriate amount of pressure is applied in a horizontally direction. Element 4 is considered the sealing olive. The reduced thickness area is shown at lead line 8.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hertrampf in view of Dai (U.S. 6,044,995). Hertrampf discloses the claimed invention except for the tamper band. Dai teaches that it is known to provide a closure with a tamper band (see element 40). It would have been

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obvious to one having ordinary skill in the art at the time the invention was made to provide the closure of Hertrampf with a tamper band, as taught by Dai, in order to indicate whether the container has been previously opened.

Response to Arguments

5. Applicant's arguments filed June 20, 2003 have been fully considered but they are not persuasive. Applicant argues that the radially inwardly extending protrusion of Hertrampf (shown above lead line 13) cannot be considered the "cylindrical bead" set forth claims 1 and 20. Claim 1 sets forth that the closure comprises a "peripheral portion having a substantially cylindrical bead, adjacent said top plate portion, and a screwthread adapted to cooperate with the threaded bottle neck". It is the examiner's position that Hertrampf closure includes these elements to the degree set forth in the claims. The screwthread of Hertrampf is shown at lead line 13 and directly below lead line 13. This screw thread engages the thread 14 of the bottle neck. Although the protrusion located above lead line 13 also engages the screwthread of the bottle neck, it can be considered the cylindrical bead because it is a bead which extends from the peripheral portion, along a cylindrical path. This bead is located adjacent the top plate of the closure to the degree set forth in the claim.

6. Applicant argues that element 9 of Hertrampf cannot be considered a sealing strip. The examiner disagrees with this position. Element 9 of Hertrampf can be considered a sealing strip because it is a strip of material which engages the neck of the bottle and forms a seal at the line of contact between elements 9 and the bottle neck. Applicant also argues that element 9 of Hertrampf "may not be considered to be deformable". The examiner disagrees with this position. In the arguments on page 2 of the response filed June 20, 2003, applicant refers to col. 4 lines 13-21 of Hertrampf, in particular lines 18-20, wherein Hertrampf discloses that "the stop 10 and mating stop 11 constrain an accurate and in particular a fixed position of the hinge formed by the cross-sectional

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slimming.” This recitation does not imply that the sealing strip 9 of Hertrampf is rigid and non-deformable at all times. This recitation simply states that when elements 10 and 11 are in contact, they maintain the hinge in a fixed position. The sealing strip 9 of Hertrampf is made of a deformable material, and if the appropriate amount of horizontal force is applied to the sealing strip 9, it will deform as a result thereof.

7. Regarding the sealing action between elements 9 and 11, any unbroken line of contact between the closure and the bottle provides a seal for the bottle. Therefore the unbroken line of contact between elements 9 and 11 provide an additional seal for the bottle.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

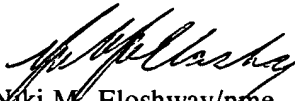
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

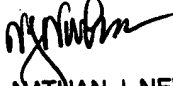
9. In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Technology Center at (703)872-9302 for regular amendments and (703)872-9303 for after-final amendments. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a USPTO deposit account. Please identify the examiner and art unit at the top

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of your cover sheet. Papers submitted via FAX into Technology Center 3700 will be promptly forwarded to the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (703) 308-1606. The examiner is in the office on Tuesdays and Fridays. Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Customer Service Office at (703) 306-5648.


Niki M. Eloshway/pme
Patent Examiner
September 5, 2003


NATHAN J. NEWHOUSE
PRIMARY EXAMINER
9/5/03